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JOHN J. HENNEY
Attala County Sheriff

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Thomas Timney, Plaintiff,
vs.
Alarie Erickson, Sheriff, etc. } No. 630

SECTION TO ADVANCE.

JAMES L. BURKE,
Counsel for Appellant and Plaintiff in Error.



IN THE
Supreme Court of the United States.
OCTOBER TERM, 1897.

THOMAS TINSLEY, APPELLANT,

v/s.

ALBERT ERRICHSON, RESPONDENT.

Please take notice that on the return herein and on the annexed petition a motion will be made before this honorable court, at the city of Washington, on the 25th day of April, 1898, at the opening of the court or as soon thereafter as counsel can be heard, that the prayer of said petition be granted, and that the said cases be advanced upon the calendar of the court and set down for argument at some early day.

Dated April 20th, 1898.

JAMES L. BISHOP,
*Counsel for Thomas Tinsley, Plaintiff in
Error and Appellant.*

To PRESLEY K. EWING, Esq.,
Counsel for Defendant in Error and Appellee.

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1897.

THOMAS TINSLEY, *Appellant*, }
v.s.
ALBERT ERRICHSON, *Respondent*. }

Now comes Thomas Tinsley and moves the court to advance the above-entitled causes to such early hearing as it may deem proper, and for reason therefor states as follows:

One of these actions is a writ of error from the court of criminal appeals of Texas from a final determination in a proceeding upon *habeas corpus*, brought by your petitioner before that court, in which the petition was dismissed and your petitioner remanded to the custody of the defendant.

Your petitioner further shows that your petitioner is now confined in the county jail at the city of Houston, in the State of Texas, upon an order of commitment made by the district court of the State of Texas, Harris county, in an action brought by Octavius C. Drew and others against The Houston Cemetery Company and others, No. 18969, for an alleged contempt of court in the refusal by your petitioner to deliver to one William Christian, a receiver of the Houston Cemetery Company, appointed by the said court in said action, by an order made and dated the 23d day of April, 1896, certain property mentioned in the said order of commitment. By the said order adjudging your petitioner guilty of said contempt it was directed that your petitioner pay to the sheriff of Harris county, Texas, a fine of \$100 as punishment for the contempt aforesaid, and that he turn over to William Christian, as receiver of the property of said company as aforesaid, the property therein described, and that in default of immediate payment of the fine and delivery of the property so directed to be turned over to the receiver that your petitioner be committed to the common

jail of Harris county and imprisoned therein until full compliance with the said order or until the further order of said court, and that a commitment issue to carry said judgment into effect.

Your petitioner claims that the said order was void for the reason that said William Christian was appointed receiver of the property belonging to and in the possession of the said Houston Cemetery Company and not of the property belonging to or in the possession of your petitioner, and that the property specified in the said order of commitment was not at the time the said receiver was appointed the property of the said Houston Cemetery Company or in the possession of the said company or of any officer thereof, and that the said district court of Texas had no jurisdiction in a proceeding to punish your petitioner for contempt for an alleged disobedience of said order to adjudge and determine the title to the said property or the right to the possession thereof, and that the said order in so far as it attempted to determine in said proceeding the right to the possession or to the ownership of the said property was void, and that in so far as it directed your petitioner to turn over to said receiver property which did not belong to the said corporation and to which it did not have the right of possession, but which belonged to and was in the possession of your petitioner, the same was void and of no effect, and that no valid order or judgment could be made against your petitioner for a disobedience thereof.

Your petitioner further shows that the said order of commitment was also illegal and void, and that the court was without jurisdiction to make the same, for the reason that the court after fining your petitioner \$100 as a punishment for the said alleged offence of contempt further directed that your petitioner should be confined in the said common jail not only until after the payment of the said fine, but until he should deliver the property specified in the said order of commitment.

And your petitioner further shows that at the time of the application for the said writ of *habeas corpus* your petitioner had been imprisoned for a period in excess of three days, and that it is expressly provided by the statutes of the State of Texas that imprisonment for contempt shall not exceed a period of more than three days.

Your petitioner further shows that the second of the above-entitled actions is an appeal to this court from an order made by the United States circuit court for the eastern district of Texas dismissing a writ of *habeas corpus* theretofore granted by the judge of said court, upon the return to which writ the order of commitment and proceedings above set forth were presented to said judge, and that the said judge thereupon dismissed the said writ of *habeas corpus*, notwithstanding that the said return showed, as your petitioner is advised and believes, that the said commitment was wholly void and of no effect.

Your petitioner further says that he was committed to jail February 6, 1897, and has been confined in jail constantly and continuously since that time, a period now upwards of fourteen months, except for about four days when he was released on bail and other brief periods when he has been in attendance at court.

Your petitioner urgently prays that the appeal herein may be brought to a hearing before the court adjourns for the summer months, for the reason that his imprisonment has not only been protracted, but is of a rigorous and exhausting character. During the first two or three weeks of his confinement he was allowed to go to a restaurant for his meals, but since that time he has been closely confined in a room in the jail and in a steel cell in said room, which prevents him from approaching from within five feet of any window. There have been placed in the said cage with him persons convicted of felonies and afflicted with loathsome diseases, and also a person who was adjudged insane and was awaiting removal to an insane asylum, and he has been

forced within a small space to keep constant company with these persons.

Your petitioner is a man of education and of refinement and of wealth, and has always been in easy and comfortable circumstances and was never before imprisoned or accustomed to such company or surroundings. The room where he is confined is in that part of the building where he is cut off from the prevailing summer breezes, which temper and render bearable the excessive summer heat of the climate; without which the heat is almost unbearable. The windows to his room have no blinds, curtains, or other means of keeping out or moderating the fierce heat of the southern sun, which shines during the hottest part of the day.

And your petitioner is not allowed outside of said cage, not even to walk around outside between the cage and the walls, and he has no opportunity to take exercise which is necessary to his health. Your petitioner is over fifty-one years of age, and in his early life, when he lived in England, was accustomed to spend his winters, on account of consumptive tendencies, in Italy and France, and it has always been necessary for him to have plenty of fresh air and take exercise and guard against exposure to preserve his health. He is not a robust man, and the cruel and unusual mode of confinement for so long a time has, as he believes, seriously and permanently impaired his health, and that if he has to remain in jail during the coming summer, which in this climate is very oppressive and enervating and which lasts until October, his health will in all probability be destroyed and his life greatly endangered.

Your petitioner is advised and believes that his imprisonment is illegal, and that he is being deprived of his liberty in violation of the rights guaranteed to him by the Constitution of the United States and of the State of Texas and of the treaties of the United States with Great Britain, of which country he is a subject. His refusal to deliver the property described in the commitment and the proceedings which he

has since taken to resist the enforcement of said order have not been intended to prevent the administration of the law or the proper exercise of judicial powers, but are the result of the honest conviction on the part of your petitioner that the said proceedings are extrajudicial, and that in resisting the same your petitioner has and is performing a duty which he feels to be imposed upon him not to submit to arbitrary and unjust action. He has accorded (offered) to said receiver the privilege of inspecting said property at all times, but refuses to surrender his title and right of possession thereof.

Wherefore your petitioner prays that these causes may be advanced to an early hearing or that he be admitted to bail to await the further orders of this court.

JAMES L. BISHOP,
Counsel for Petitioner.

STATE OF TEXAS,
City of Houston, County of Harris, } ss:

Thomas Tinsley, being duly sworn, says that he is the petitioner above named and has read the foregoing petition and knows the contents thereof, and that the same is true according to the best of his knowledge, information, and belief.

THOMAS TINSLEY.

Sworn to before me this 16th day of April, 1898.

[SEAL.] DAVID HANNAH,
Notary Public in and for Harris County, Texas.

(Endorsed :) Cases Nos. 16,845 & 16,846. Supreme Court U. S., October term, 1897. Term Nos., 632 & 633. Thomas Tinsley, appellant and P. E., vs. Albert Erichson, sheriff, &c. Motion to advance. Filed April 21, 1898.

